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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,567	12/22/2000	Mark Rindsberg	XMRD:002	4309
25937	7590	11/04/2004	EXAMINER	
ZARETSKY & ASSOCIATES PC 8753 W. RUNION DR. PEORIA, AZ 85382-6412			LIPMAN, JACOB	
			ART UNIT	PAPER NUMBER
			2134	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/747,567

Applicant(s)

RINDSBERG, MARK

*SR*

Examiner

Jacob Lipman

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. The correction to the specification was received on 9/9/2004. This correction is acceptable.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ireton et al., US patent number 5,901,225, in view of Green, US patent number 6,247,168.

With regard to claims 1, 10, 21, 30, 41, 50, and 61-64, Ireton discloses a method for securely installing patch data (column 1 lines 6-8) in a device having a processor, program memory, and patch memory (column 4 lines 24-27) including encrypting clear patch data using a key (column 10 lines 40-43), storing the encrypted patch into data memory (column 3 lines 52-53) retrieving the patch and decrypting it using the key (column 10 lines 43-44), and loading it into patch memory and executing it (column 3 lines 53-58). Ireton, however, does not disclose how the patch is downloaded to the device. Green discloses a method of securely downloading patch data in a device (column 11 lines 40-41) including, transmitting the patch to the device over a non-secure channel in encrypted form (column 11 lines 31-33), and receiving the patch on

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the device and decrypting it (column 11 lines 33-39), thus verifying it's integrity. It would have been obvious to one of ordinary skill in the art to implement Green's encrypted patch downloading to Ireton's Patch storage system for preventing unauthorized updates (Green column 11 lines 27-29).

With regard to claims 2-7, 22-27, and 42-47, the examiner takes official notice that download are often sent by satellites or terrestrial repeaters. It would have been obvious to one of ordinary skill in the art to use the above-described method in a satellite or terrestrial repeater system to prevent unauthorized updates.

With regard to claims 8, 9, 28, 29, 48, and 49, Green discloses the server can control whether to allow all devices, or only a portion to decrypt the patch (column 12 lines 9-21).

With regard to claims 11-14, 31-34, and 51-54, Ireton discloses the external memory can be RAM or NVM (column 5 lines 20-25).

With regard to claims 15, 16, 35, 36, 55, and 56, Green discloses that the patch is only performed if it is verified (column 12 lines 7-8). The examiner takes official notice that systems often delete viruses and reboot when they are detected. It would have been obvious to one of ordinary skill in the art to treat an unverified patch as a possible virus and delete it and reboot for increased security.

With regard to claims 17-20, 37-40, and 57-60, the examiner takes official notice that keys are often hard coded into computer devices. It would have been obvious to one of ordinary skill in the art to use hard-coded keys in the above-described method to increase security.

***Response to Arguments***

3. Applicant's arguments filed 9/9/2004 have been fully considered but they are not persuasive. Applicant's invention is a patch that is downloaded by one method, and installed by another. Ireton discloses the method of installation, but does not disclose the method of downloading. The examiner cited Green as an example of art that showed that downloaded patches should be encrypted, at least in part, to increase security. The fact that the patch is not fully encrypted, but only the serial number, still reads on the claims. The motivation to combine was given in the prior office action.

4. The examiner points out that applicant's response was unclear, and that the statement, "Applicant respectfully submits that the prior art fails to disclose or suggest XXX", on page 14, could not be understood, and left applicants argument unclear.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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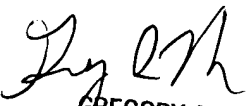
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Lipman whose telephone number is 571-272-3738. The examiner can normally be reached on 7:00 - 4:00 (M-Th).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on 571-272-3838. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JL

  
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SUPERVISORY PATENT EXAMINER  
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